of such evidence, may result in a conviction. I am conscious of the argument that on the present state of evidence, providing there is no further evidence in the trial proper later, the trial could result in an order of acquittal, thereby making the current incarceration of the applicants unnecessary but this unhappy situation could have been ameliorated of course by having a speedy trial as far as circumstances would permit, or even by a change in the law making the offence of murder a bailable offence, but such a change is a matter of policy within the province of Parliament. If an inquiring magistrate does not determine guilt or innocence, and the expression, *viz.*, "sufficient grounds for committing the accused for trial" does not denote a case proved beyond a reasonable doubt, then this reasoning would have to be carried to its logical conclusion, leading to my view as explained above, so that at least for the time being, all the accused persons in different preliminary enquiries may feel the impact of this court's ruling equally or impartially, as far as possible.

The order of committal for trial is again confirmed.

*Order accordingly.*

Solicitors : *J. Nadchatiram.*

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## DENAH BINTI DAIM & ORS. v. RUBBER INDUSTRY SMALLHOLDERS DEVELOPMENT AUTHORITY

**[O.C.J. (Siti Norma Yaakob J.) February 28, 1985]**

**[Kuala Lumpur – Civil Suit No. 557 of 1979]**

*Rubber Replanting Scheme – Claim for damages against RISDA for failing in their obligations – RISDA agent for smallholders – No proof of breach of statutory duty or negligence.*

In this case the plaintiffs who were smallholders of rubber land grouped themselves to take advantage of a replanting scheme introduced by RISDA, the defendant. The plaintiffs transferred all their rights and obligations of their grants to the defendant. The defendant entered into agreements with contractors to develop the land but the contractors were unsuccessful as they were hampered by goats and buffaloes who came to the area and destroyed the young rubber trees and also by failure of co-operation on the part of the plaintiffs. Subsequently the defendant took the task of doing rehabilation work but this also failed. The plaintiffs thereupon brought an action for damages against the defendant for failing in their obligations to replant their smallholdings with high yielding rubber trees.

**Held**: (1) in this case the defendant was acting as the agent for the plaintiffs and on the evidence the defendant had not been negligent in carrying out its duties;

(2) the evidence did not support the contentions of the plaintiffs that the defendant has committed a breach of its statutory duties or was guilty of negligence.

CIVIL SUIT.

*S.T. Gamany* for the plaintiffs.

*Raja Abdul Aziz Addruse* (*K.T Joseph* with him) for the defendant.

*Cur. Adv. Vult.*

**Siti Norma Yaakob J.** : The 20 plaintiffs in this suit are smallholders who had grouped together to take advantage of a replanting scheme that was then being introduced by the defendant for the first time in Sungai Nilam, Ulu Selangor where their smallholdings are situated. Their participation in the scheme started when they complained to the Selangor Menteri Besar who visited the area in 1972 that their smallholdings were not yielding enough rubber to guarantee them a livelihood and they sought his assistance as to the best way to remedy the situation. Under his good offices, the defendant was approached to assist them in developing their smallholdings under a scheme known as Scheme No.5 of the Rubber Industry Replanting Scheme. Under this group replanting scheme, various advantages can be derived by both the smallholders and the defendants, namely

(1) it can be done at lower costs.

(2) it is easier for the defendant to transfer technology to a group of people.

(3) it is easier for the defendant to supply planting materials to a group at a particular time.

(4) it is easier for the defendant to provide extension work for the good upkeep of the trees.

(5) the area under the scheme will be tappable at the same time, and

(6) it is easier for the defendant to give advice on proper tapping, proper processing and proper sales of rubber.

The scheme that is published as Legal Notification No.208 of 1971 is available only to the smallholder who owns 5 acres or less of rubber land but he must apply individually to the defen-

dant to participate in the scheme and upon approval, he is assured of a grant of $750/- per acre to be paid in seven instalments covering a period of over 5½ years. The amount of the grant was in 1974 increased to $900/- per acre with payments spread over in 5 instalments.

To be able to earn the first instalment, the smallholder is required to clear his land of bushes and lalang, old rubber trees have to be felled and destroyed, budding rows have to be prepared and planting holes dug so that the land is ready to be replanted with high yielding rubber seeds to be supplied by the defendant. The smallholder may either clean and prepare the land himself or engage a registered contractor of his own choice. If the clearing and preparation of the land is done by the smallholder himself and his work has been inspected and found to be satisfactory by the defendant, the first payment of the grant amounting to $250/- will be paid directly to him. If he however engages a contractor to do the work and also authorises the contractor to receive the grant, the defendant would, on being satisfied that the work has been satisfactorily done by the contractor, pay the first and subsequent instalments of the grant to the contractor directly.

Subsequent payments of the grant are made in stages according to the work done, the second instalment of $100/- to be paid 6 months after the first payment or 6 months of the planting, whichever is the later, the third and subsequent payments during intervals of 1 year. Apart from providing financial assistance in the form of the grant, the defendant also provides their expertise in the form of advice in the management and the general upkeep of the land.

In this case, the 20 plaintiffs who were approved of the grants elected to transfer all their rights and obligations of their grants to the defendant and to that end, each of them executed a letter of authority, (AB 1 – 25), authorising the defendant to represent them in all matters affecting their grants including receipts of the instalment payments under the grants.

Following the execution of such letters of authority, the defendant entered into an agreement, AC 12 – 17, with a registered contractor, D.W.7, to work on the plaintiffs' lands covering an area of about 170 acres. By this agreement, the defendant, *inter alia*, undertood to make payments of the grants to D.W.7 and he, in turn, was obliged, *inter alia*, to see that all works were completed by September 1979.

D.W.7 started the initial work of clearing and replanting without any problem but he only managed to collect 2 payments from the defendant when he ceased work in 1974 as his work was hampered by the goats and buffaloes that came to the area and destroyed the young rubber trees. He remedied this by replacing the damaged trees with new trees, but the animals kept coming to the area and destroying the trees. Disheartened, he ceased work altogether and got another contractor, D.W. 8, to take over from him.

The defendant then entered into a second and similar contract, AC 18 – 21, with D.W.8 but the latter only started to work on the land in 1976 and he managed to do so for only 11 months (for which he received 2 payments) when the defendant terminated the contract due to his failure to carry out his obligations with due care and diligence. Under the terms of the contract, D.W.8 was to have worked the land for 4½ years from the time he started replanting. On his part, D.W.8 explained he was faced with the problems of goats and buffaloes straying into the area and destroying the young rubber trees. He also had problems with the plaintiffs who refused to allow him to use the manure supplied by the defendant on the land itself and that his own workers were prevented from getting into the area by workers that were originally employed by D.W.7.

After D.W.8 left, the defendant took upon the task of doing rehabilitation work on the land in 1978, and a sum of $40,000/- was especially set aside for this purpose, over and above the replanting grants. However, the defendant only managed to do 20 months of work on the land as it, too, ran into difficulties with the plaintiffs. The plaintiffs did not provide the co-operation that the defendant sought, those that were engaged to work on the land failed to attend to their work and were not following instructions and there are also allegations that they stole equipments belonging to the defendant.

Thus, in 1979, seven years after the scheme was first started, what was anxiously awaited as a promising project turned out to be a complete failure as only 30% of work was done on the lands and the result is the present action brought by the plaintiffs claiming damages against the defendant for failing in its obligations to replant their smallholdings with high yielding rubber trees.

At the trial the parties agreed to proceed on liability first, reserving the question of damages to a later date and the only issues before me are whether the plaintiffs have a cause of action against the defendant, and if so, whether the defendant has been negligent in carrying out its obligations towards them.

To decide on these issues, it is necessary to consider firstly the establishment and functions of the defendant. Being a creature of statute, it was established as a body corporate by its own Act, the Rubber Industry Smallholders Development Authority Act, 1972 (hereinafter to be referred to as the Act), taking over all the rights, liabilities and functions of the Rubber Industry (Replanting) Board (hereinafter to be referred to as the Board), established under the Rubber Industry (Replanting) Fund Ordinance 1952. Thus, the Board that was established under the 1952 Ordinance took on a new name with the formation of the defendant and the defendant continues to manage, administer and control the Rubber Industry (Replanting) Fund (hereinafter referred to as the Fund), set up under the 1952 Ordinance, into which the collection of a cess on the production and export of rubber is paid. It is from this Fund that the defendant, with the approval of the Minister of Trade and Industry, prescribes schemes for replanting or new planting of rubber or the planting of other crops in substitution of rubber. Thus, grants that were approved to the plaintiffs came from this Fund.

Evidence was led by 7 of the 20 plaintiffs to the effect that when they were briefed of the group replanting scheme by the defendant's officer, D.W.2, he had represented to them that the defendant would take over their lands to carry out all the necessary work of replanting them with high yielding rubber trees and to enable the defendant to do just that, they only need to execute the necessary letters of authority. Apart from that they need do nothing more but to wait for 7 years when their high yielding rubber trees would be ready to be tapped. This piece of evidence brings into issue the role to be played by the defendant after having approved the grants to the plaintiffs. This is explained very clearly by D.W.5, the Assistant District Officer of Ulu Selangor at the material time in the following evidence.

"The role to be played by RISDA is merely to co-ordinate and supervise the replanting, meaning that RISDA merely helps the people to replant their holdings . . . . . For the group replanting, the smallholders gave their consents to have their lands replanted jointly with the help of RISDA. Since these holdings were to be developed jointly and assisted by RISDA, the smallholders had the choice of either letting themselves to be employed by RISDA to work on the holdings or they can leave the holdings and work elsewhere i.e. RISDA can employ workers to work on the lands, i.e., do the replanting work. . . . . In this instance, the involvement of the smallholders is that they can be employed to work on their lands, i.e. employed by the contractor."

D.W.5's evidence is also borne out by D.W.1, the defendant's Director of Replanting, when he testified as follows.

"In this case, the smallholders cannot form a registered group. All the smallholders could authorise RISDA through the Surat Wakil Kuasa so that the work will be done by a contractor coming into employment with RISDA, acting on behalf of the smallholders. In the case where Surat Wakil Kuasa authorises RISDA to receive the grant payment, RISDA's role is entering into the contract on behalf of the smallholders and to supervise the work or give the advice where necessary on behalf of the smallholders. In this particular type of development, it is encouraged to form a Committee comprising of representatives of the smallholders who could advise or take up with RISDA if there are anything to be done or to be corrected in the programme of the work. The smallholders would monitor all the works through the Committee".

There was also evidence that after the plaintiffs executed the letters of authority, they had asked the defendant to look for a contractor as they could not find one. This is borne out by their letter of agreement, D.4, signed by the 6 members of the Co-ordinating Committee made up of D.W.6, the Penghulu of Sungai Selasek as Chairman and the 5 Ketua Kampong of the surrounding areas as members. There is conflicting evidence how this Committee was formed but it is not disputed that it was the body through which the plaintiffs could get their ideas across or complaints to the defendant.

From the evidence it is abundantly clear that in its capacity as a co-ordinator, the defendant had entered into 2 agreements with the 2 contractors, not as a principal but as an agent of the plaintiffs which, under normal circumstances, the plaintiffs would have to enter individually with each contractor. Although the plaintiffs now come to Court to complain that they were not aware of what they have got themselves into, they cannot run away from the fact that by executing the letters of authority, they had authorised the defendant to work as their agent. This is also clearly spelt out in the recitals to both the agreements. The fact that they were not supplied with copies of the agreements is quite immaterial as they had left the management of the grants solely in the hands of the defendant.

As an agent, has the defendant been negligent in carrying out its function with due care and diligence? There is evidence that D.W.3, the defendant's Field Officer, carried out supervision over the work of both contractors at the site and it was he who certified their works upon which payments were accordingly made. The fact that only 30% of the grants was utilised, bears further testimony that inspection and supervision was carried out by the defendant and that there were other factors contributing to the failure of the project. The main one as disclosed by the evidence is the problem of the goats and buffaloes straying into the scheme and destroying young trees. There is also evidence that some of these animals belong to the plaintiffs themselves and despite warnings being given, that they should keep their animals away from the scheme, the animals continued to enter the area and ravaged the trees. Thus it was the animals also that prevented both contractors from achieving the required number of rubber trees for each acre. Another factor contributing to the failure of the project is the attitude of the plaintiffs themselves in not providing the necessary co-operation when that is most needed in a scheme of this nature. In this case the defendant had done all it was expected to do after the grants were approved. It had provided a contractor when the plaintiffs failed to provide one. Again a second contractor was found when the first one failed to make any headway in the scheme. When again the services of the second contractor was prematurely terminated, the defendant tried to salvage the project by alloting a special fund to rehabilitate the area but even their efforts proved unsuccessful and the main reason why this is so is the plaintiffs' lack of understanding as to how the whole scheme works.

From the pleadings, the defendant is alleged to have breached its statutory duties as laid down under section 6(2) (iii) & (iv) of the Act, but on the evidence, I find that they have not proved this to be so as no contractual relationship exists between them. The Act, the 1952 Ordinance, and the regulations governing the scheme speak only of assistance to be given by the defendant and in this case, the defendant had done just that in making the grants available so that the plaintiffs' lands can be worked and planted with high quality rubber trees. It is not bound by law to make good any loss suffered by any smallholder who has failed to work his land successfully. The fact that this scheme which the plaintiffs had so enthusiastically embarked into was somewhat different from the normal scheme of providing financial assistance to an individual who then works his land as opposed to a group who delegates the work to the defendant does not alter the defendant's position of providing assistance only in the form of either cash or kind and neither has it altered or excluded the active participation of the plaintiffs to the scheme itself. The plaintiffs have also submitted that since they have no privity of contract with the contractors, the defendant must be made to be held responsible and must make amends. I do not consider it is proper to decide this case on such a reasoning as it will amount to a deprived or aggrieved party picking on anybody at random to vent his frustrations on. The plaintiffs have sued the defendant on the grounds of a breach of its statutory duties under the Act and for negligence, but as the evidence does not support such contentions, this action must fail and I accordingly dismiss it with costs.

*Claim dismissed.*

Solicitors : *Daim & Gamany; K.T. Joseph & Co.*

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## PUBLIC PROSECUTOR v. YAP HUAT HENG

**[A.C.J. (Shaikh Daud J.) April 13, 1985]**

**[Kuala Lumpur – Federal Territory Criminal Appeal No. 8 of 1985]**

*Criminal Law and Procedure – Sentence – Rape – Concurrent and consecutive sentences.*

*Penal Code, ss. 376, 392 & 397 – Rape and robbery – Sentence.*

In this case the facts were that the complainant a girl aged 17 years old and her sister aged 13 years old were in their house when four male persons forced themselves into the house. The respondent was one of the four persons. They then threatened and robbed the complainant and her sister of their jewelleries and cash. After that each of the four persons including the respondent took turns and raped both the complainant and her sister. The four persons were subsequently arrested and charged. The three others had been dealt with earlier. The charges against the respondent were two charges of rape and two charges of robbery. The respondent pleaded guilty to all four charges. After hearing the facts and the plea in mitigation, the learned President of the Sessions Court sentenced the respondent to three years' imprisonment on each of the charges and ordered the sentences to run concurrently. The Public Prosecutor appealed.

**Held:** (1) the sentences imposed by the learned President were not only manifestly inadequate but also wrong in law;